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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6948 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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PATEL TRIBHOVANDAS SHANKERBHAI

Versus

ASSISTANT COLLECTOR

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Appearance:

MR AJ PATEL for Petitioner

MS MANISHA LOVEKUMAR ADDL.GOVERNMENT PLEADER

for Respondent No. 1

NOTICE SERVED for Respondent No. 2

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/07/1999

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, petitioner has challenged the order dated 24-6-1985 of the Secretary (Appeals) in Revenue Department of the State Government confirming the order dt. 4-1-1985 of the Assistant Collector, Dabhoi in Breach of Condition Case No.2 of 1984.

2. The short facts giving rise to this petition as stated in the order of Secretary (Appeals) are as under :

2.1 Respondent no.2 herein had agreed to sell land in question situated at village Timbereva, Tal. Sinor, Dist. Baroda (being land bearing Survey No. 173 admeasuring Acres-2 Gunthas 15 and Survey No. 38 admeasuring Acre-1, Gunthas 11, in all admeasuring Acres-3, Gunthas 26), to the petitioner herein. The said agreement to sell was executed by respondent no.2 on 6/12/1971. The petitioner claims to be in possession of the land on the basis thereof. Petitioner filed Special Civil Suit No. 9 of 1973, wherein consent decree was passed on 28-3-1973 and accordingly on 134-5-1975 respondent no.2 executed the agreement to sell the above land in favour of petitioner in consideration of Rs.25,000/-.

2.3 On 3/4/1994, Deputy Collector, Chhotaudepur issued notice to the petitioner as well as to the respondent no.2 calling upon the parties to show cause why the transaction should not be set aside and the land should not be ordered to be vested in State Government and why penalty should not be imposed upon the petitioner for committing breach of the provisions of Sec.73A and 73AA of the Bombay Land Revenue Code, 1878. The petitioner as well as respondent no.2 appeared before Assistant Collector and submitted that since the transaction was entered into prior to the Amendment to the Act coming into force in the year 1975, no action should be taken.

2.4 Assistant Collector, Dabhoi in his impugned order dt. 4/1/1985 observed that the land in question was granted to respondent no.2 on a new impartible tenure, and therefore, respondent no.2 could not have transferred the land or even parted with possession of the land in favour of the petitioner without prior permission of the Collector, hence the transaction was required to be declared as illegal and the land was ordered to be vested in Government with the direction to regrant land to the original occupant within one month from 4/1/1985.

2.5 The petitioner challenged the aforesaid order of the Assistant Collector in revision before the Secretary (Appeals), Revenue Department of the State Government, who dismissed the revision application on the ground that no steps were taken to get the land converted from new tenure land into old tenure land and to obtain approval prior to the agreement in question.

2.6 It is against the aforesaid orders that the present petition is filed by the intending purchaser of the land in question.

3.. While admitting the petition, operation and enforcement of the impugned orders was stayed by this Court. The respondents are served and Ms. Manisha Lovekumar, learned AGP appears for respondent no.1, but none appears for respondent no.2.

4. At the hearing of this petition, Mr. Patel learned counsel for the petitioner has submitted as under:-

(i) The notice dt. 3/4/1985 (Annexure:B to the petition) was issued on the ground of alleged breach of provisions of Secs. 73A and 73AA of the Bombay Land Revenue Code, whereas the impugned order is passed on the ground that the land was new impartible tenure land and Banakhat was entered into without prior permission of the authority.

(ii) The impugned notice was issued in 1984 after about eight years from the date of impugned Banakhat, and therefore, there was unreasonable delay in initiating proceedings. Such proceedings ought not be initiated after a reasonable time. Delay of about eight years is fatal to the initiation of proceedings.

(iii). In any view of the matter, in the case of Patel Maganbhai Kesurbhai since Decd. through His Heirs Vs. State of Gujarat, 1998(2) G.L.R. 961, this Court (Coram: Hon'ble Mr.Justice S.K.Keshote ) has taken the view that Sec.73AA of the Bombay Land Revenue Code does not absolutely prohibit transfer of land from a tribal to a non-tribal but prior sanction of the Collector is required for such transfer, but in appropriate cases, the Court may send the matter back to the Collector to consider the question of granting ex post facto sanction to such transaction. The same course may be adopted in the instant case.

4. On the other hand, the learned AGP has opposed the petition and she has submitted that since no prior permission was obtained by respondent no.2 or the petitioner for converting the land from old tenure into old tenure land, nor any permission was obtained under Sec.73AA of the Code, the agreement to sell was illegal, and therefore, the impugned orders passed by the

authorities are legal and proper.

5. Having heard the learned counsel for the parties, it appears to the Court, that since there was no registered sale deed nor any mutation entry or any consequent certification of such entry in Village Form No.6, the authorities cannot be treated as having notice of the impugned transaction and, therefore, the delay in initiating proceedings cannot be said to be fatal. Nevertheless in view of the fact that notice dt. 3/4/1984 was issued only under Sec.73AA of the Bombay Land Revenue Code, and the same did not incorporate any ground about any breach of terms of the grant under which land in question was given by the authority to respondent no.2 and since respondent no.2 has not appeared to oppose this petition and this Court has, in the aforesaid case of Patel Maganbhai Kesurbhai (Supra) held that in appropriate cases, the court can remand the matter back to the Collector for considering grant of ex post facto approval, and looking to the passage of about 24 years after the transaction in question, in the facts and circumstances of the case, this Court adopts the same course and remands the matter to the Assistant Collector, Chhotaudepur for hearing the matter afresh with liberty to the parties to apply for expost facto sanction.

6. In the result, the petition is partly allowed. Respondent No.2 and the petitioner shall be at liberty to apply to the competent authority for granting expost facto sanction to the transaction in question. The competent authority shall hear and decide the matter afresh after hearing both the parties in light of the observations made hereinabove and without being inhibited by the impugned orders dt. 4-1-1985 and 24-6-1985 of the Assistant Collector and Secretary (Appeals) respectively.

7. The petition is disposed of in terms of the aforesaid directions and observations with no order as to costs.

Date: 16/7/1999. (M.S.Shah, J.)  
(ccshah)